

III. ARGUMENT

A. Group I: Claims 1-3, 5, 7-10, 36 and 37

In the "Response to Argument" section of the Answer dated March 23, 2006, the Examiner stated that Drasler et al. "teaches a medical apparatus including at least a pair of adjacent generally longitudinal members 10 including hinge sections 23 each having a circumferential width, wherein the radial thickness is greater than the circumferential width as recited in the claims."

Thereafter, with claim 37 apparently in mind, the Examiner then stated that "One of ordinary skill in the art could recognize that a hinge position 23 of stent 10 of Drasler - '101 has the same profile as that of strut 10 because strut 10 and hinge portion 23 of strut 10 have rectangular cross sections 11."

Significantly, at Col. 15, line 48 et seq., the Drasler et al. patent states while referencing FIGS. 1A and 5, that "struts 10 are connected to a node which includes a hub 100, four hinges 23, and four transition regions 25." The struts 10 are then described as having a strut width 150, strut radial dimension 155 and strut cross sectional area 160 which are unique from the hinge width 105, hinge radial dimension 115 and hinge cross sectional area 120. (Notably, the strut width 150 is greater than the strut radial dimension 155.) The strut dimensions are further described as providing stent 5 "with a strong beam that can transfer the large outward expansion force of the hinge" and the hinge dimensions are described as providing the stent 5 "with a large outward force yet not be subject to bending due to crush deformation."

Accordingly, it is clear both from FIGS. 1A and 5 as well as the specification of the Drasler et al. patent that struts 10 and hinges 23 define different elements. Thus, struts 10 do not include hinges 23 but are separate structures. Moreover, it is clear that struts 10 do not embody longitudinal members having a radial thickness which is greater than a circumferential width. In

fact, the Drasler et al. patent actually teaches away from such structure since as outlined above, the disclosed stent relies on the struts to perform a different function from that of the hinge (i.e., "transfer the large expansion force of the hinge"). Further, in view of this specific function intended for the struts 10, it is submitted that one of ordinary skill in the art would not "recognize that hinge portion 23 ... has the same profile as that of strut 10 because both strut 10 and hinge 23 of strut 10 have rectangular cross sections" as was suggested in the Examiner's Answer. Rather, in view of the teachings of Drasler et al., the struts 10 and hinge 23 are to have different and distinct cross sections.

Therefore, it is respectfully submitted that it is an error to conclude that the struts 10 taught by Drasler et al. meet the limitations recited in each of Group I claims 1-3, 5, 7-10, 36 and 37.

Furthermore, as previously highlighted in the Appeal Brief, Drasler et al. does not teach the subject matter of claims 36 or 37 which depend directly from claim 1. Clearly, the Drasler et al. patent does not teach, as is recited in claim 36, at least one longitudinal member both having a radial thickness which is greater than a circumferential width as well as such structure extending a length of one cell. The Drasler et al. patent also clearly does not teach an apparatus lacking a hinge as recited in claim 37.

For these reasons, it is believed that Group I claims 1-3, 5, 7-10, 36 and 37 are allowable over the cited art.

B. Group II: Claims 12-15 and 38

For similar reasons as those provided above in Section III. A., it is respectfully submitted that Drasler et al. does not meet the limitations recited in claims 12-15 and 38. Thus, it is submitted that Drasler et al. does not anticipate these claims as suggested by the Examiner.

Again, with reference to Col. 15, line 48 et seq. and FIGS. 1A and 5 of the Drasler et al. patent, it is clear that there is no teaching in Drasler et al. of the single-piece cylindrical endoprosthesis recited in claims 12-15 and 38. Drasler et al. simply does not contemplate adjacent circumferential spaced beams having a circumferential width less than a radial thickness but rather, as stated, discloses struts 10 having a width 150 greater than the radial thickness 155 of the strut. Drasler et al. also does not contemplate beams having both a circumferential width less than its radial thickness and a generally uniform cross-section along its length as is specifically recited in claim 38.

Accordingly, it is also believed that Group II claims 12-15 and 38 are allowable over the cited art.

C. Group III: Claims 17, 20, 22, 23 and 39

Since independent claim 17 and dependent claims 20, 22, 23 and 39 recite an endoprosthesis including longitudinal beams having a circumferential width and a radial thickness, wherein the radial thickness is greater than the circumferential width, it is respectfully submitted that the Drasler et al. patent also does not anticipate these claims for the reasons set forth above in Sections III. A. and B. To wit, Drasler et al. does not teach that struts 10 embody a radial thickness which is greater than a circumferential width of the strut.

Furthermore, as submitted in the Appeal Brief, Drasler et al. does not disclose a stent which when in an expanded condition includes beams each of which are mostly curved throughout their length (See for example, FIG. 6 of Drasler et al.). Drasler et al. also does not teach at least one beam having a generally uniform cross-section along its length as is further required by dependent claim 39. Curiously, in the Examiner's answer, it is stated that struts 10 have a generally uniform cross-section at least along a major portion of the strut's length and a distinction appears to have been made between the recitation of a "whole length" and the recited

"length." Even if such a distinction was deemed to have any merit, it is still significant to patentability that in its expanded configuration, the Drasler et al. stent lacks struts having a width less than a radial dimension and curved beams along its length as is required by all claims of Group III.

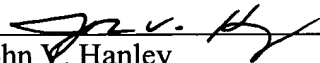
As such, it is believed that Group III claims 17, 20, 22, 23 and 39 are also allowable over the cited art.

CONCLUSION

For all the reasons stated above, Applicants respectfully submit that the Examiner has erred in rejecting claims 1-3, 5, 7-10, 12-15, 17, 20, 22, 23, 36, 38 and 39. It is respectfully requested that the Board reverse the rejection of these claims and thus, pass pending claims 1-24 and 36-39 to issue.

Respectfully submitted,

FULWIDER PATTON LLP

By: 
John V. Hanley
Registration No. 38,171

JVH/kst
6060 Center Drive, Tenth Floor
Los Angeles, CA 90045
Telephone: (310) 824-5555
Facsimile: (310) 824-9696
Customer No. 24201